HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 3201 (M/S) of 2001
(Old No. 28891/1996)

Anand Singh Bisht
And others ..... Petitioners

Vs

II nd Additional District
Judge, Nainital and others .....Respondents

Counsel for the petitioner Sh. S.S. Adhikari
Counsel for the respondents Miss. Maneka Tripathi

Dated: 7-8-2004

Hon'ble Rajesh Tandon J.

Heard Sh. S.S. Adhikari learned counsel for the petitioners and Miss. Maneka Tripathi counsel for the respondent.

By the present writ petition the petitioners have prayed for the issue of a writ, order or direction in the nature of certiorari quashing the orders dt. 23-5-1995 passed by the respondent No.4 and order dt. 31-5-1996 passed by the respondent No.1.

Brief facts giving rise to the present writ petition are that the respondent No.s 3 and 4 have filed a suit being Original suit No. 57 of 1994 in the court of Munsif, Nainital against the petitioners for a decree for permanent injunction restraining the petitioners from interfering with the plaintiff's possession over Khet No.1060, 1061, 1066, 1067, 1068, 1070,1071, and 1073 area 13 Nails 12 Muthi situated in Kuriya Gaon Patti Bhawali Tehsil and District Nainital.

Petitioners/Defendants have filed a written statement in the said suit denying the plaint averments and further pleaded therein that the petitioners were the real owners of the disputed

plot and in possession thereof. The respondent No.2 before whom the aforesaid suit is pending framed issue no.1 on the question as to whether the Civil Court has jurisdiction to try the said suit or the suit is barred by the provisions of Section 331 of the U.P.Z.A.L.R Act.

The main contention of the plaintiff's/ contesting respondents before the Court below was that the plaintiffs had purchased the disputed plots from their alleged earstwhile owner Sh. Madan Singh by a sale deed dt. 9-6-1994 and ever since then the plaintiffs were in possession over the disputed plots and when the petitioners interfered with their possession over the disputed plots on 11-8-1994, the plaintiffs were compelled to file the present suit. The plaintiffs were recorded as Bhumidars in the Revenue records.

The respondent No. 3 has filed a suit simplicitor for injunction and as such no title has been claimed. Both the courts below therefore have rightly held that the civil court has jurisdiction to try the suit.

I find no illegality in the orders passed by the two courts below. No interference is required in the orders passed by the two courts below under Article 226/227 of the Constitution of India.

The writ petition is dismissed. No order as to costs.

Dated: 7-8-2004 **(RAJESH TANDON J.)**

M.K.